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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,523	01/12/2004	Hayo Jager	RSW920030259US1	2433

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EXAMINER

BARBEE, MANUEL L

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/755,523

Applicant(s)

JAGER ET AL.

Examiner

Manuel L. Barbee

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-21, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4-9, 12-15, 17-21, 23 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Turicchi, Jr. et al. (US Patent No. 6,628,994).

With regard to receiving performance goals, as shown in claims 1, 8, 14 and 21-25, Turicchi, Jr. et al. teach measuring system performance and adjusting parameters to provide optimal system performance and defining a measure of performance (col. 1, line 57 - col. 2, line 7; Fig. 2). With regard to retrieving a first input parameter from a plurality of parameters and providing the parameter to a test system and receiving an output variable from the test system corresponding the input parameter value, as shown in claims 1, 8, 14, 21, 23 and 24, Turicchi, Jr. et al. teach selecting a parameter, setting the value of the parameter and measuring the value of system performance (Fig. 2, steps 255, 260, 265; col. 3, line 44 - col. 4, line 16). With regard to optimizing the first parameter value based on the determination, as shown in claims, 1, 8, 14, 21, 23 and 24, Turicchi, Jr. et al. teach adjusting the parameter to provide the optimal system performance (Fig. 2, step 280). With regard to one or more processors, a memory and

Art Unit: 2857

nonvolatile storage, as shown in claims 8 and 23, Turicchi, Jr. et al. teach a method for operation on a computer which would include memory and nonvolatile storage (claim 1).

With regard to adjusting the first input parameter value, providing the adjusted input parameter value to the test system and receiving one or more second output values, as shown in claims 1, 18, 14, 21, 23 and 24, Turicchi, Jr. et al. teach incrementing the value of the selected parameter, and measuring the system performance with the new parameter value (Fig. 2, steps 250-270). With regard to determining whether the first or second output variables are closer to the goals, as shown in claims 1, 18, 14, 21, 23 and 24, Turicchi, Jr. et al. teach adjusting the parameter to a value for optimal system performance after testing all values in a specified range (Figs. 2, steps 250, 280).

With regard to a system automation engine to test a system under test, as shown in claims 2, 9, 15, 21, 23 and 24, Turicchi, Jr. et al. teach a method for automatic adjustment of computer system parameters (col. 3, lines 44-49). With regard to incrementing the parameter value, as shown in claims 4, 11 and 17, Turicchi, Jr. et al. teach incrementing the value of the parameter (Fig. 2, step 270). With regard to retrieving a second parameter, providing the second parameter and the first parameter to the test system, receiving an output variable and adjusting the second input parameter based on the output, as shown in claims 5, 12 and 18, Turicchi, Jr. et al. teach selecting a second parameter after adjusting the first parameter (Fig. 2, step 280, step 210). With regard to buffer size, as shown in claims 6, 13, 19, 21, 23 and 24, Turicchi, Jr. et al. teach adjusting the memory dedicated to buffer cache (col. 1, lines

Art Unit: 2857

16-21, claim 1). With regard to response time, as shown in claims 7 and 20, Turicchi, Jr. et al. teach defining performance using response time (col. 1, line 57 - col. 2, line 7).

Allowable Subject Matter

3. Claims 22 and 25 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: Neither Turicchi, Jr. et al. nor Umberger et al. teach a method that includes receiving one or more performance goals providing a first input parameter corresponding to a performance goal to a system automation engine and receiving one or more first output variables from the system automation engine, adjusting the first input parameter based upon the received first output variables in order to meet one or more of the performance goals, providing the adjusted first input parameter value to the system automation engine, receiving one or more second output variables from the test system corresponding to the adjusted first input parameter value, determining whether the second output variables are closer than the first output variables to one or more performance goals and performing the adjusting again based upon the determination, particularly adjusting the first input parameter based upon the received first output variables in order to meet one or more of the performance goals.

Response to Arguments

5. Applicant's arguments filed 31 May 2005 have been fully considered but they are not persuasive.

Applicant states that during the telephonic interview conducted on 19 May 2005, the Examiner agreed that by including a "variable output change comparison to a

performance goal” limitation in Applicant’s independent claims that Applicants’ amended independent claims would read over Turicchi and Umberger. Applicant further believes that such limitations are found in original claim 3. However, upon further consideration, it is the Examiner’s position that the limitations in the claims as amended are taught by Turicchi, Jr. et al. The limitations of original claim 3 were incorporated into the independent claims including limitations for “determining whether the second output variables are closer than the first output variables to one or more of the performance goals.” Turicchi, Jr. et al. teach optimal system performance as a performance goal and determining which parameter in a range of parameters is closest to that goal (Fig. 2, steps 250-280). Measured performance output values corresponding to two or more selected input parameters would be compared to determine which input parameters results in the best system performance, which is the performance goal.

Applicant states that Turicchi teaches away from “determining whether second output variables are closer than first output variables to one or more of the performance goals”, as claimed by Applicants. Comparing more than two output variables does not teach away from comparing two output variables.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 2857


mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel L. Barbee whose telephone number is 571-272-2212. The examiner can normally be reached on Monday-Friday from 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mlb
July 14, 2005


MARC S. HOFF
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